IN THE UNITED STATES COURT OF INTERNATIONAL TRADE

AMERICAN INSTITUTE FOR INTERNATIONAL STEEL, INC., SIM-TEX, LP, and KURT ORBAN PARTNERS, LLC Plaintiffs, v. UNITED STATES and KEVIN K. MCALEENAN, Commissioner, United States Customs and Border Protection, Defendants.	)	Court No. 18-00152

COMPLAINT

Plaintiffs American Institute for International Steel, Inc. ("AIIS"), Sim-Tex LP ("Sim-Tex"), and Kurt Orban Partners, LLC ("Orban"), by and through their attorneys, hereby submit their complaint in this action seeking a declaratory judgment that section 232 of the Trade Expansion Act of 1962, as amended, 19 U.S.C. § 1862 ("section 232"), is unconstitutional as an improper delegation of legislative power to the President, in violation of Article I, section 1 of the Constitution and the doctrine of separation of powers and the system of checks and balances that the Constitution protects. Plaintiffs also seek an order of this Court enjoining defendants from enforcing the 25% tariff increase for imports of steel products and other trade barriers imposed by Presidential Proclamation 9705 of March 8, 2018 (the "25% tariff increase"), as subsequently amended. Plaintiffs' claims arise under the Constitution, and this Court has jurisdiction over this action under 28 U.S.C. § 1581(i)(2) and (4). Because this action raises an issue of the constitutionality of an Act of Congress and the constitutionality of a proclamation of the President, and because this action has significant implications for the administration of the

customs laws, Plaintiffs request that the Chief Judge of this Court designate three judges of this Court to hear and determine this action in accordance with 28 U.S.C. § 255.

PARTIES

1. Plaintiff AIIS is a non-profit membership corporation that brings this action on behalf of its more than 100 members. AIIS is incorporated in the District of Columbia and has its principal place of business in Alexandria, Virginia. It is the only steel-related trade association that supports free trade. AIIS's members, which include the Plaintiffs Sim-Tex and Orban, have various business connections with the imported steel products that are subject to the 25% tariff increase challenged in this action. Those members include companies that use imported steel in the manufacture of their own products, traders in steel, importers, exporters, freight forwarders, stevedores, shippers, railroads, port authorities, unions, and many other logistics companies, all of which have been and will continue to be adversely affected by the 25% tariff increase on imported steel products. AIIS's members handle, import, ship, transport, or store approximately 80% of all imported basic steel products in the United States. Through its international trade counsel, AIIS testified in opposition to the use of section 232 at the public hearing at the U.S. Department of Commerce during the investigation held on May 24, 2017.

2. Plaintiff Sim-Tex is a limited liability company organized under the laws of Texas, with its principal place of business in Waller, Texas. Sim-Tex is an importer and the leading wholesaler in the United States of Oil Country Tubular Goods (OCTG) casing and tubing, which are carbon and alloy steel pipe and tube products used in the production and distribution of oil and gas. Sim-Tex imports directly, as the importer of record, and indirectly, through traders, approximately 40,000 – 45,000 tons per month from Korea, Taiwan, Brazil, Germany, Italy and other sources. Sim-Tex also purchases and sells OCTG tubing (sizes 2"

through 3 1/2") produced in the United States. Domestic OCTG producers generally do not produce these smaller sizes in sufficient quantities to fulfill Sim-Tex's needs of approximately 20,000 – 25,000 tons of tubing per month because they can make larger diameter pipe on the same equipment at much higher profit margins. Sim-Tex's domestic allocation of smaller size OCTG tubing is less than 3,000 tons per month, and the balance must be made up with imports.

3. Plaintiff Orban is a limited liability company organized under the laws of California, with its principal place of business in Burlingame, California. Orban is a specialty steel trader that purchases globally from leading carbon, alloy, and stainless and high nickel alloy manufacturers and sells to manufacturers in the United States. It is a member of Plaintiff AIIS, and it purchases between 200,000 and 250,000 tons of imported steel per year, all of which is subject to the 25% tariff increase. As the importer of record on most of these purchases, it is directly responsible for paying all tariffs, including the 25% tariff increase. Among the products that Orban imports and sells are the following:

- Oil country tubular goods and line pipe for the oil, gas and energy industries;
- Oil country couplings and fittings as well as standard pipe;
- Hot-rolled coil for the production of downhole tubing and casing as well as general durable goods manufacturing;
- Cold rolled and coated flat steels for residential construction as well as the manufacture of steel drums and barrels that serve the U.S. chemical sector;
- Wire rod that is drawn into a multitude of finished wire products for agricultural, durable and non-durable goods applications;
- Stainless steel tubes, bars and wire for specialty applications where corrosion resistance is required;

- Reinforcing bars for residential, non-residential and certain civil construction applications; and
- Hot-rolled bars and grating used in various construction applications.

Many of these products are available in the United States, but the prices globally for the same or even higher quality products are much more competitive than the prices for those products from domestic mills.

4. The defendant United States of America is the entity to which the 25% tariff increases are being paid and is the statutory defendant under section 1581(i)(2) and (4).

5. The defendant Kevin K. McAleenan is the Commissioner of U.S. Customs and Border Protection. He is responsible for collecting the payments made on account of the 25% tariff increase imposed by the President. He is sued in his official capacity only and is a defendant solely to assure that the injunctive relief sought in the complaint can be directed to an individual as well as the United States.

OPERATION OF SECTION 232

6. Section 232 was enacted pursuant to the power granted to Congress in Article I, Section 8 of the Constitution "to lay and collect [t]axes, [d]uties, [i]mposts and [e]xcises" as well as its authority "[t]o regulate [c]ommerce with foreign [n]ations." Section 232(b) directs the Secretary of Commerce (the "Secretary"), on the application of any department or agency, the request of an interested party, or on his own motion, to undertake an investigation to determine the effects of imports of a particular article of commerce on the national security (the "subject article"). After following certain procedural steps, and within 270 days of initiating the investigation, the Secretary is required to submit a report to the President, which includes his findings on whether the subject article is being imported into the United States in such quantities

or under such circumstances as to threaten to impair the national security, and his recommendations for action by the President.

7. Under section 232(c), the President has 90 days to determine whether to concur with the findings of the Secretary, and if he concurs, to "determine the nature and duration of the action that, in the judgment of the President, must be taken to adjust the imports of the [subject] article and its derivatives so that such imports will not threaten to impair the national security."

8. Although the initial determination by the Secretary under section 232(b) and the President's action under section 232(c) are tied to "national security," section 232(d) includes an essentially limitless definition of national security and directions as to how that term is to be applied:

> the Secretary and the President shall further recognize the close relation of the economic welfare of the Nation to our national security, and shall take into consideration the impact of foreign competition on the economic welfare of individual domestic industries; and any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports shall be considered, without excluding other factors, in determining whether such weakening of our internal economy may impair the national security.

Because section 232(d) allows the Secretary and the President to consider, in essence, anything in the Nation's economy that imports might affect, there is nothing that the President may or may not take into account in determining whether the national security, as elastically defined, may be threatened or impaired by the imports of the subject article and no limit on the import adjustments that he may impose to remedy the threat to section 232(d)'s unbounded meaning of national security.

9. After having made these determinations, the President has an unlimited menu of options that he may employ. These include imposing tariffs on goods that are currently duty-free

and increasing tariffs above those currently existing under the law for the subject article—with no limit on the level of the tariff—and/or the imposition of quotas—whether or not there are existing quotas—and with no limit on how much a reduction from an existing quota (or present level of imports) there can be for the subject article. In addition, the President could choose to impose licensing fees for the subject article, either in lieu of or in addition to any tariff or quota already in place. Conversely, the President may also reduce an existing tariff or increase a quota, whenever he concludes that such a reduction or increase is in the interest of the national security. And for all these changes in the law, the President may select the duration of each such change without any limits on his choice, and he may make any changes with no advance notice or delay in implementation.

10. Under section 232(c) the President has a virtually unlimited range of other choices in determining what adjustments to imports he wishes to make, with no guidance from Congress as to how to make them.

(a) There is no requirement in section 232 that the President treat imports from all countries on a non-discriminatory basis with regard to such matters as the amount of the tariff or level of quota to be imposed, or whether to exempt some countries, but not others from an otherwise applicable tariff or quota. Nor is there any prohibition on such discriminatory treatment.

(b) As more fully described below, although imported steel products vary widely in their uses, quality, specifications, availability in the United States, and relation to national security, the President is permitted to disregard those differences, or take them into account, in his unfettered discretion;

(c) There is no requirement that the President take into account adverse consequences from a proposed tariff, although he may, if he chooses, do so for any or all such consequences. Those consequences include (1) raising the prices of domestic products; (2) causing workers outside the domestic industry of the subject article to lose their jobs or work fewer hours; (3) favoring imported products that contain the subject article and that can be sold at lower prices in the United States because the tariff does not apply to them; or (4) reducing foreign markets for U.S. exports as a result of higher domestic input prices.

(d) There is no requirement that the President be consistent in his interpretation and implementation of section 232, even for the same articles from one proceeding to the next.

11. Because section 232 allows the President a virtually unlimited range of options if he concludes, in his unfettered discretion, that imports of an article such as steel threaten to impair the national security, as expansively defined, section 232 lacks the intelligible principle that decisions of the United States Supreme Court have required for a law not to constitute a delegation of legislative authority, which would violate Article I, section 1 of the Constitution.

12. Section 232 also lacks procedural protections that might limit the unbridled discretion that the President has under it. The range of omitted procedural protections include the following:

(a) Although the President may order a remedy under section 232 only if he concurs with a finding by the Secretary that imports of the subject article may threaten to impair the national security, the President is not bound in any way by any remedial recommendations of the Secretary, and he is not required to base his remedy on the report or the information provided to the Secretary through any public hearing or submission of public comments.

(b) The President is not required to provide an opportunity for the public to comment on the actual tariff or quota that he is considering imposing, and the Secretary's request for comments in this case did not identify any specific remedies that he or the President were considering;

(c) The President is not required to explain his decision in light of what prior presidents have done with the same article under section 232, or in light of the Secretary's report or the information provided at the public hearing or from public submissions; and

(d) No one is required to prepare an environmental impact statement or a cost benefit analysis under Executive Order No. 12866 (Sept. 30, 1993), as amended from time to time, or make any kind of rigorous analysis of the positive and negative effects of a proposed tariff or quota.

13. Section 232 does not have a provision for judicial review of orders by the President under it, and because the President is not an agency, judicial review is not available under the Administrative Procedure Act, 5 U.S.C. § 706. Furthermore, the Department of Justice, on behalf of the United States, in a lawsuit challenging the 25% steel tariff increase on the ground that the President exceeded his statutory authority under section 232, *Severstal Export GMBH, et al. v. United States, et al.*, No. 18-00057 (Ct. Int'l Trade 2018), has taken the position, with which Plaintiffs agree, that once

> the President received the report that constitutes the single precondition for his exercise of discretion under Section 232(c), concurred in its findings, and took the action to adjust imports that was appropriate "in the judgment of the President." 19 U.S.C. § 1862(c). [The] decision to take action was the President's to make, and his exercise of discretion is not subject to challenge [in court].

Defendants' Mot. to Dismiss at 16-17. *Id.* at 19 ("the President's exercise of discretion pursuant to Section 232 is nonjusticiable").

THE PRESIDENT'S 25% TARIFF INCREASE

14. On April 19, 2017, the Secretary opened an investigation into the impact of steel imports on U.S. national security. As part of that investigation, the Secretary held a public hearing on May 24, 2017, and provided for the submission of written statements by interested persons. On January 11, 2018, the Secretary sent the President his report entitled "The Effects of Imports of Steel on the National Security" (hereinafter, the "Steel Report") (available at https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_20180111.pdf). The Steel Report, which was released to the public on February 16, 2018, recommended a range of alternative actions, including global tariffs, each of which had the objective of maintaining 80 percent capacity utilization for the U.S. steel industry. Steel Report at 58–61. At the same time, the Secretary issued a report with similar conclusions regarding imports of aluminum.

15. On February 18, 2018, the Secretary of Defense sent a memorandum to the Secretary, with copies to various individuals who work directly for the President, stating that the Defense Department "does not believe that the findings" in the reports on steel and aluminum "impact the ability of DoD programs to acquire the steel and aluminum necessary to meet national defense requirements." (available at https://www.commerce.gov/sites/commerce.gov/files/department_of_defense_memo_response_to_steel_and_aluminum_policy_recommendations.pdf).

16. On March 8, 2018, the President issued Proclamation 9705, which imposed the 25% tariff increase at issue in this action, applicable to all imported steel articles from all countries except Canada and Mexico, effective March 23, 2018. Proclamation No. 9705, 83 Fed. Reg. 11,625 (Mar. 15, 2018). On the same date, the President imposed a similar tariff, but in the

lesser amount of 10%, on aluminum imports, also based on section 232. Proclamation No. 9704, 83 Fed. Reg. 11,619 (Mar. 15, 2018).

17. Section (3) of Proclamation 9705 authorized the Secretary "to provide relief from the additional duties [the 25 % tariff increase] set forth in clause 2 of this proclamation for any steel article determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality and is also authorized to provide such relief based upon specific national security considerations." 83 Fed. Reg. at 11,627. On March 16, 2018, the Secretary issued an interim final rule setting forth the requirements for obtaining such relief. *Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel Into the United States and Adjusting Imports of Aluminum Into the United States; and the Filing of Objections to Submitted Exclusion Requests for Steel and Aluminum*, 83 Fed. Reg. 12,106 (Mar. 19, 2018).

18. The 25% tariff increase imposed under section 232 is not based on any showing of illegal or unfair trade practices by steel producers in other countries. Those practices are already the basis of additional tariffs and/or quotas issued under the antidumping and countervailing duty laws of the United States. According to the Steel Report, as of January 11, 2018, for the steel industry alone, there were 164 such orders in effect, and there were an additional 20 publicly announced investigations underway. Steel Report at Appendix K, pp.1-3.

19. In Proclamation 9711, issued on March 22, 2018, the President noted the continuing discussions with Argentina, Australia, Brazil, Canada, Mexico, South Korea, and the European Union (EU) on behalf of its member countries, on alternative means to address the threatened impairment to the national security posed by imports of steel articles from those countries. He determined that the preferred means to address the threat to national security

posed by imports of steel articles from these countries was to continue the ongoing discussions on such alternatives and, in the interim, to exempt steel imports from these countries from the tariff in Proclamation 9705, which he did until May 1, 2018. Proclamation No. 9711, 83 Fed. Reg. 13,361 (Mar. 28, 2018).

20. On April 30, 2018, in Proclamation 9740, 83 Fed. Reg. 20,683 (May 7, 2018), the President noted that the United States had agreed in principle with Argentina, Australia, and Brazil on alternative means to address the threatened impairment to the national security posed by steel articles imports from those countries and extended the temporary exemption of those countries, as well as Canada, Mexico, and the countries of the EU, until June 1, 2018. The Proclamation also excluded South Korea from the 25% tariff increase, without an end date, based on a quota negotiated with South Korea, subject to further monitoring by the United States.

21. On May 31, 2018, the President issued his most recent Proclamation applicable to the 25% tariff increase. Proclamation No. 9759, 83 Fed. Reg. 25,857 (June 5, 2018). That Proclamation excluded Argentina, Australia, Brazil, and South Korea from the 25% tariff increase without an end date, and, at the same time, the President terminated the temporary exemptions for Canada, Mexico, and the countries of the EU.

22. Since May 31, the President has made no further changes in the application of the 25% tariff increase for steel imports, but as Secretary Wilbur Ross stated on May 31, 2018, "The president has the authority unilaterally . . . to do anything he wishes at any point subsequent to today." *Trump has officially put more tariffs on U.S. allies than on China*, Wash. Post, June 1, 2018, at A13 (available at https://www.washingtonpost.com/news/wonk/wp/2018/05/31/trump-has-officially-put-more-tariffs-on-u-s-allies-than-on-china/?utm_term=.98551855c7ba) (last visited June 26, 2018).

23. To date, the President has applied section 232 only to imports of steel and aluminum, but on May 23, 2018, the Secretary, at the request of the President, announced that he has commenced an investigation into whether imports of automobiles, including SUVs, vans, light trucks, and automotive parts threaten to impair the national security. Press Release, U.S. Dept. of Commerce (May 23, 2019) (available at https://www.commerce.gov/news/press-releases/2018/05/us-department-commerce-initiates-section-232-investigation-auto-imports) (last visited June 26, 2018). In addition, in April 2017, the Secretary stated that in addition to steel and aluminum, "core industries" for the Administration's trade agenda include "vehicles, aircraft, shipbuilding, and semiconductors." *Commerce Secretary Ross: Trade 'National Security' Probes Could Extend to Semiconductors, Aluminum*, Dow Jones, Apr. 25, 2017 (available at https://www.dowjones.com/scoops/commerce-secretary-ross-trade-national-security-probes-extend-semiconductors-aluminum/) (last visited June 26, 2018).

THE FAILURE OF SECTION 232 TO PROVIDE AN INTELLIGIBLE PRINCIPLE TO GUIDE DECISIONS OF THE PRESIDENT ON ADJUSTING IMPORTS

24. Under the current tariff regime, there are five general categories of steel products— flat products, long products, pipe & tube products, semi-finished products, and stainless products —and within those five categories, there are separate tariff lines of 61, 25, 27, 8, and 36 sub-products, respectively. Many of the submissions to the Secretary focused on the differences among these 157 sub-products, but the President treated them all identically, except for the possibility of obtaining relief on a product-by-product basis, which, as described in paragraph 25 *infra,* is quite limited. Among the product differences which the President chose to disregard, although he was not legally required to take them into account, nor was he forbidden from doing so, are the following:

(a) U.S. companies supply all the defense needs for the product;

(b) There is no defense use for the product;

(c) U.S. companies do not make the product, do not make it in sufficient quantities to fill the non-defense needs for the product, and/or do not make it with the quality required by the purchaser of the product and/or its customers;

(d) The product is not available from U.S. companies in the portion of the United States where the purchaser is located and the transportation cost of sending it there is prohibitive; and

(e) Because of the highly specialized nature of the product, and the relatively limited uses, it is not economical for U.S. steel companies to produce it, or the ability to increase supplies of the product can only occur over a number of years and then only if demand for the product can be assured.

25. The possibility of obtaining relief pursuant to the Secretary's interim rule set forth in paragraph 17, *supra*, is quite limited because: (a) each application for an exclusion must be submitted by a single entity; (b) each application can only be for a single product; (c) "[o]nly individuals or organizations using steel in business activities (*e.g.*, construction, manufacturing or supplying steel product to users) in the United States may submit exclusion requests," 83 Fed. Reg. at 12,110 (which excludes importers and traders in steel such as Plaintiffs Sim-Tex and Orban); (d) there is a mandatory waiting period of 30 days during which objections may be filed; (e) there is no process to respond to or rebut objections filed, whether accurate or not, and (f) there is no fixed time within which applications must be decided, although the Secretary has stated that the review "normally will not exceed 90 days." 83 Fed. Reg. at 12,111. The Secretary has acknowledged that there have been nearly 20,000 applications for exclusions filed, most of which have not been decided. There is no provision for judicial review of the denial of

an exclusion application, and given the highly discretionary nature of exclusion decisions, success on judicial review would almost certainly be very difficult if not impossible.

26. Although the rationale for tariffs and quotas under section 232 is to provide protection from imports for articles such as steel needed for national security, the President is not required to take into account (although he could if he chose to do so) whether supplies from particular countries are or are not likely to be available to provide for U.S. national security needs. Because section 232 does not embody an intelligible principle, even as applied to which countries should be excluded from any tariff or quota because they are reliable sources of steel during a conflict, the President is free to exclude certain countries or not, without regard to whether they are or are not likely to be able to supply steel when required by national security. On that question, the following facts are uncontested based on the Steel Report, public submissions, and/or statements by the President:

(a) Canada and Mexico are, respectively, the largest and fourth largest current sources of steel imports, totally 25.2% of 2017 imports according to the Steel Report. Steel Report at 28. They are close U.S. allies and trading partners, and, because the United States shares borders with them, there is virtually no chance that their steel imports will be unavailable in the event of a conflict, yet section 232 does not either compel the President to take those facts into account or forbid him from doing so in deciding whether to apply the 25% tariff increase to those countries;

(b) The countries of the EU are among our closest allies, so that, in the event of an armed conflict, we would expect them to join us and work together to assure that there is sufficient steel available to protect their national security and ours, yet section 232 does not compel the President to take those facts into account, nor does it forbid him from doing so, in deciding whether to apply the 25% tariff increase to the EU countries; and

(c) The President appears to be using the imposition of the 25% tariff increase as a bargaining chip in his trade negotiations with steel producing countries, including Canada, Mexico, South Korea, Brazil, Argentina, Australia, and the EU countries, regarding trade matters unrelated to steel imports. Section 232 neither authorizes nor forbids the President from using the threat to impose tariffs on imported products for that purpose.

27. The submissions to the Secretary produced credible evidence of significant adverse consequences, examples of which are set forth below. Section 232 did not require the President to take those consequences into account when he imposed the 25% tariff increase, although it also did not forbid him from doing so. Among the most significant adverse effects on which there is no intelligible principle to guide the President are the following:

(a) Reduced competition from imported steel will increase the price of domestic steel;

(b) Increased steel prices will increase the costs to purchasers of products containing steel, including both ultimate consumers and those that use steel products to produce other products;

(c) Increased prices of products using steel products for which the tariff is paid will make those products less competitive (1) against foreign products imported into the United States, and (2) against foreign competitors when U.S. businesses export their products, in both cases widening the trade deficit;

(d) Increased tariffs provide an incentive for U.S. manufacturers of products containing steel to shift some of their facilities abroad in order to avoid paying the 25% tariff, thereby reducing investments in the United States and lowering our total national output;

(e) Reductions in imported steel will not only reduce the jobs in U.S. companies that depend on non-U.S. steel for products that they make, but will also cost jobs in industries such as

transportation that deliver foreign steel products, including delivery by water through our major ports;

(f) Encourage retaliation by countries whose products are subject to the 25% tariff increase, by imposing tariffs and/or quotas on U.S. products or services unrelated to the steel industry, thereby harming U.S. providers of those products or services, including farm products for which the United States is a major exporter;

(g) Creating uncertainty, with the potential to interrupt delivery of steel products to, among others, businesses directly serving the Department of Defense;

(h) Threatening the economic livelihood of small and mid-size businesses that depend on foreign steel, but that have fixed-price contracts with larger companies, such as those in the automobile industry, and for which they cannot re-negotiate the price at which they have agreed to provide fixed quantities, to take into account the tariff-increased price of the steel in their product;

(i) The inability to obtain specialized steel products in the United States may make it very expensive, if not impossible, to provide products needed to comply with Department of Energy efficiency rules;

(j) For certain products, such as tin mill steel used to make food containers, the increase in price may cause food companies to shift to other materials for their containers, such as paper, plastic, and aluminum, and potentially drive the producers of the metal for cans out of business;

(k) Imposing significant delays when foreign specialty steel is not available because of the time (and money) required to have substitute supplies of steel tested and certified by the ultimate purchasers that have very exacting standards; and

(l) Eliminating foreign sources of a product may result in there being only a single source for a product which, in addition to the potential for monopoly pricing, may, in the event of a natural or economic disaster, eliminate even that sole source.

INJURIES TO PLAINTIFFS

28. For Plaintiffs Sim-Tex and Orban and other members of Plaintiff AIIS that purchase imported steel or products that contain imported steel, the 25% tariff increase has already and will continue to increase the cost of imported steel and, unless those members increase their sales prices, the added tariff costs will reduce their profit. Alternatively, those members can attempt to maintain their profit margins by raising the prices they charge, which will likely reduce their sales in the United States and abroad, and may require them to lay off workers or reduce their wages. The 25% tariff increase will also have a negative effect on their cash flow and on their bank borrowing lines.

29. If section 232 and therefore the 25% tariff increase are held unconstitutional, the companies described in paragraph 28 that actually paid the 25% tariff increase may be able to recover that increase from the United States. But those companies will not be able to recover their lost profits from reduced sales or lower profit margins, and those lost profits constitute irreparable harm to those companies. Moreover, for those workers at those companies who will have their incomes reduced because there is less work for their companies as a result of the impact of the 25% tariff increase, those lost wages cannot be recovered and therefore constitute further irreparable harm.

30. Many AIIS members do not themselves purchase imported steel or products containing imported steel, but their businesses are involved in various phases of the transportation of imported steel. The 25% tariff increase was intended to, has had, and will

continue to have the effect of, reducing the total volume of imported steel, which adversely affects these members in the following ways:

(a) Those members that transport imported steel are paid by the volume of imported steel that they transport; the 25% tariff increase will reduce that volume and thereby reduce their revenue;

(b) The unions that are members of AIIS represent workers who are paid, in part, by the volume of imported steel that they handle in moving that steel from one location to another; the 25% tariff increase will reduce that volume and thereby reduce the income of the unions' members who handle imported steel or possibly eliminate their jobs;

(c) The port authorities, customs brokers, insurance companies, and logistics companies that are members of AIIS derive significant portions of their revenue from their handling of imported steel; the 25% tariff increase will reduce the amount of imported steel and thereby reduce the revenue of those ports and logistics companies.

Because none of the members of AIIS described in this paragraph will have paid the 25% tariff increase, directly or indirectly, they will have sustained irreparable damage because they will have no claim for monetary damages from the United States even if the 25% tariff increase is held to be unconstitutional.

CLAIMS FOR RELIEF

31. On its face, section 232 does not contain an intelligible principle from the Congress that the President must use when imposing tariffs or quotas under it. Specifically, subsection 232(c) simply authorizes him to "determine the nature and duration of the action that, in [his] judgment . . . must be taken to adjust the imports of [steel products] so that such imports will not threaten to impair the national security."

32. As shown by the submissions to the Secretary described in paragraphs 26 and 27, *supra*, the lack of an intelligible principle in section 232 presents more than a theoretical problem. That absence permitted the President, in his unfettered discretion, to make countless very significant policy choices in implementing section 232 as applied to imports of steel products for which there was no guidance. Under section 232, the President became a lawmaker for tariffs, rather than a law administrator for tariffs. As applied to the 25% tariff increase, section 232 constitutes an unconstitutional delegation of the legislative authority given to Congress to "lay and collect Taxes, Duties, Imposts and Excises" and to "regulate Commerce with foreign Nations." U.S. Const. art. I, § 8. Therefore, section 232 violates Article I, section 1 of the Constitution under which "All legislative Powers granted herein shall be vested in a Congress of the United States." By contrast, the President does not have the authority to write the laws; rather his duties under Article II, section 3 are to "take Care that the Laws be faithfully executed."

33. Section 232 also violates the doctrine of separation of powers and the system of checks and balances that the Constitution protects because there is no judicial review of the President's determinations under section 232. Given the absence of an intelligible principle to govern section 232, judicial review would be largely meaningless even if it were available. Moreover, there are no other procedural protections against misuse of section 232 which would apply to orders by federal agencies reviewable under the Administrative Procedure Act, such as those described in paragraph 12, *supra*. Furthermore, unlike the process by which a bill becomes a law, which requires approval of both Houses of Congress, after full consideration of the specific language being proposed, and signature by the President (or a congressional two-thirds override of his veto), orders under section 232 are based on the sole determination of the

President as to whether the particular form of the tariff or other import adjustment that he has selected will prevent the impairment of the national security, as expansively defined in section 232(d).

34. The result is that the President is permitted by the open-ended grant of power in section 232 to do as he did here regarding steel tariffs: to read section 232 however he pleases, to pick and choose among the alternatives presented, with no limits based on the evidence presented, and with no need to explain his changing decisions or to defend them in a court of law. Presidential lawmaking of that kind is simply not provided for in the United States Constitution and its system of separation of powers and checks and balances created by the Framers, and accordingly, section 232 is unconstitutional on its face for that reason as well.

35. As a result of the unconstitutional 25% tariff increase, each of the Plaintiffs has been and will continue to be irreparably injured as set forth in paragraphs 28-30 above. For these reasons, Plaintiffs lack an adequate remedy at law and are therefore entitled to both a declaratory judgment that section 232 is unconstitutional and an injunction against its continuing application.

DEMAND FOR JUDGMENT AND PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following:

a. That the Chief Judge of this Court designate three judges of this Court to hear and determine this action;

b. That the Court enter a declaratory judgment that section 232 and Proclamation 9705, together with the subsequent amendments to it, are unconstitutional as a violation of Article I, section 1 of the Constitution and the doctrine of separation of powers and the system of checks and balances that the Constitution protects;

c. That the Court permanently enjoin the defendants from enforcing Proclamation 9705 and the subsequent amendments to it;

d. That the Court award Plaintiffs their costs and a reasonable attorneys' fee; and

e. That the Court grant such other and further relief as may be just and proper.

Respectfully submitted,

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